

(c) A motion for reconsideration must:

(1) Specifically describe the extraordinary circumstances that warrant reconsideration; and

(2) Include all arguments and supporting documents.

(d) Extraordinary circumstances that may warrant granting reconsideration include, but are not limited to:

(1) Error in the Board's interpretation of material facts;

(2) Recent judicial development;

(3) Change in Departmental policy; or

(4) Evidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the decision.

(e) If the motion cites extraordinary circumstances under paragraph (d)(4) of this section, it must explain why the evidence was not provided to the Board during the course of the original appeal.

(f) The Board will not grant a motion for reconsideration that:

(1) Merely repeats arguments made in the original appeal, except in cases of demonstrable error; or

(2) Seeks relief from the legally binding consequences of a statute or regulation.

[75 FR 64664, Oct. 20, 2010]

§ 4.404 Consolidation.

If the facts or legal issues in two or more appeals pending before the Board are the same or similar, the Board may consolidate the appeals, either on motion by a party or at the initiative of the Board.

[75 FR 64665, Oct. 20, 2010]

§ 4.405 Extensions of time.

(a) If a document other than a notice of appeal is required to be filed or served within a definite time, a party may seek additional time by filing with the Board a motion requesting an extension of time.

(b) A motion requesting an extension must be filed no later than the day before the date the document is due, absent compelling circumstances. The motion may be filed and served by facsimile. Section 4.401(a) does not apply to a motion requesting an extension of time.

(c) Except as provided in paragraph (f) of this section, before filing a motion requesting an extension of time, the moving party must make reasonable efforts to contact each other party to determine whether the party opposes the motion. The moving party must state in its motion:

(1) Whether any party it reached opposes the motion; and

(2) What steps it took to contact any party it was unable to reach.

(d) Except as provided in paragraph (f) of this section, the party must support its motion requesting an extension of time by showing there is good cause to grant it.

(e) A Board order granting or denying a motion requesting an extension will state when the document must be filed. Except as provided in paragraph (f) of this section, if the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board orders otherwise.

(f) A party seeking additional time to file an answer may have one automatic extension, not to exceed 30 days, of the deadline in § 4.414(a) by filing a motion for such extension under paragraphs (a) and (b) of this section.

[75 FR 64665, Oct. 20, 2010]

§ 4.406 Intervention; *amicus curiae*.

(a) A person who wishes to intervene in an appeal must file a motion to intervene within 30 days after the person knew or should have known that the decision had been appealed to the Board.

(b) A motion to intervene must set forth the basis for the proposed intervention, including:

(1) Whether the person had a right to appeal the decision under § 4.410 or would be adversely affected if the Board reversed, vacated, set aside, or modified the decision; and

(2) How and when the person learned of the appeal.

(c) The Board may:

(1) Grant the motion to intervene;

(2) Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or